

Tuesday, October 25, 2005

The Board met at its offices at 450 N Street, Sacramento, at 10:25 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, provided a report regarding the windows at headquarters.

Mr. Chiang directed staff to work with the Department of General Services to provide a report on the effect of declaring an emergency.

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board declared an emergency due to the building's curtain wall problem and requested the Department of General Services to confirm this declaration.

Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board directed staff to seek funding legislation or alternative funding for the repair project.

PROPERTY TAXES HEARING

Looking Glass Networks, Inc. (7861), 316105

2005, \$17,700,000.00 Unitary Value

For Petitioner:

Eric Wojinski, Representative

Joe Molina, Representative

For Property and Special Taxes Department: Shirley Johnson, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Board-adopted unitary value fully recognizes the obsolescence of petitioner's unitary property.

Staff's Exhibit: Obsolescence/Impairment under FASB 144 Chart (Exhibit 10.1)

Action: Upon motion of Ms. Yee seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel absent and not participating in accordance with Government Code section 7.9, the Board ordered that the petition be submitted for decision.

Exhibits to these minutes are incorporated by reference.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Donald Prince, 283459

1999, \$26,719.00 Assessment

For Appellant:

Michael Ferguson, CPA

For Franchise Tax Board:

John Penfield, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant met the requirements for capital gain exclusion pursuant to Internal Revenue Code section 121 by proving that he used the subject property as his principal residence for two of the five years immediately preceding the sale of the property.

Whether appellant has shown his claimed adjusted basis in the property, by substantiating the alleged expenditures for improvement to the subject property.

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Costco Wholesale Corporation, 266592

1996, \$545,027.00 Claim for Refund

1997, \$215,231.00 Claim for Refund

1998, \$117,758.00 Claim for Refund

1999, \$192,784.00 Claim for Refund

2000, \$236,105.00 Claim for Refund

2001, \$178,761.00 Claim for Refund

For Appellant:

Derick Brannan, Representative

Jon Sperring, Representative

Richard Galanti, Witness

Monica Smith, Witness

For Franchise Tax Board:

Daniel Biedler, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant is a "qualified taxpayer," as defined in Revenue and Taxation Code section 23649, Subdivision (c)(1), for purposes of the Manufacturers' Investment Credit (MIC).

Whether appellant's claimed bakery and meat department property constitutes qualified property for purposes of the MIC.

Whether the Board has authority to invalidate a Franchise Tax Board regulation, as it did with California Code of Regulations, title 18, (Regulation) section 23649-3, in the *Appeal of Save Mart Supermarkets and Subsidiary* (2002-SBE-002), decided February 6, 2002 (*Save Mart*), so that Regulation 23649-3 does not apply here.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

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David A. and Cheryl D. Duffield, 241055

1994, \$7,152,029.00 Assessment

For Appellant:

Jeffrey M. Vesely, Attorney

Kerne H. O. Matsubara, Attorney

Annie H. Huang, Attorney

For Franchise Tax Board:

Renel Sapiandante, Tax Counsel

Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants have shown that they did not form the Duffield Investment Group, Inc. (DIG), for the principal purpose of evading or avoiding California tax by implementing a plan that involved appellant-husband transferring his PeopleSoft stock in a gain-free transaction to DIG, DIG selling the PeopleSoft stock, purchasing and constructing their retirement home in Nevada from those proceeds, and deferring a \$30 million distribution from DIG until after appellants moved to Nevada, without incurring California tax.

Assuming that appellants' purpose in forming DIG was to evade or avoid California tax, have appellants shown that Internal Revenue Code section 269 does not apply to disallow appellants' gain-free transfer of PeopleSoft stock to DIG because that transaction did not result in a deduction, credit, or other allowance that appellants would not otherwise have enjoyed.

Assuming that appellants did not intend to evade or avoid California tax when they formed DIG, have appellants shown that DIG was not an investment company, so that appellants may be entitled to nonrecognition of gain from the transfer of appellant-husband's PeopleSoft stock to DIG, under IRC section 351.

Whether appellants have shown that respondent's denial of their request for interest abatement was an abuse of discretion.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.2)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 10.3)

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 12:05 p.m. and reconvened at 1:35 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

PROPERTY TAXES HEARING

UNOCAP (480), 316350

2005 \$45,100,000.00 Unitary Value, \$4,510,000.00 Late Filing Penalty

For Petitioner:

Peter W. Michaels, Attorney

For Property and Special Taxes Department:

Sophia Chung, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the late-filing penalty should be abated.

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel absent and not participating in accordance with Government Code section 7.9, the Board ordered that this hearing be continued after consideration of the Property Taxes Matters, Consent Agenda.

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PROPERTY TAX MATTERS, CONSENT

With respect to the Property Tax Matters, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Petitions for Reassessment of Unitary Value

Southwest Gas Corporation (152), 314763

2005, \$158,400,000.00 Unitary Value

Action: Increase the 2005 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

mPower Communications, Corporation (7724), 316107

2005, \$58,500,000.00 Unitary Value

Action: Reduce the 2005 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Seren Innovations, Inc. (7832), 315698

2005, \$87,900,000.00 Unitary Value

Action: Reduce the 2005 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Mercednet, Inc. (7904), 314924

2005, \$2,490,000.00 Unitary Value

Action: Reduce the 2005 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

KMC Millennium, LLC (7905), 315700

2005, \$8,150,000.00 Unitary Value

Action: Reduce the 2005 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

KMC Funding Corporation (7962), 315701

2005, \$14,400,000.00 Unitary Value

Action: Reduce the 2005 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Petitions for Penalty Abatement on Unitary Value

Global Valley Networks (229), 316104

2005, \$1,520,000.00 Penalty

Action: Grant the penalty abatement on 2005 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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Almanor Railroad Company (892), 311524

2005, \$39,800.00 Penalty

Action: Grant the penalty abatement on 2005 unitary value as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Petition for Reallocation of Unitary Value

Plains Pipeline, LP (465), 316771

2005, \$25,259,000.00 Unitary Value

Action: Approve reallocation of the 2005 unitary value as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

PROPERTY TAXES HEARING

UNOCAP (480), 316350

2005 \$45,100,000.00 Unitary Value, \$4,510,000.00 Late Filing Penalty

For Petitioner: Peter W. Michaels, Attorney

For Property and Special Taxes Department: Sophia Chung, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the late-filing penalty should be abated.

Action: Upon motion of Mr. Parrish, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel absent and not participating in accordance with Government Code section 7.9, the Board ordered that the petition be submitted for decision.

PUBLIC HEARINGS

Business Taxpayers' Bill of Rights Hearings

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Business Taxpayers' Bill of Rights Hearings.

Speakers: William Matthew Connell, All American Surf Dogs
Johnny Morris, The Incense Peddler
Jesse McClellan, Associated Sales Tax Consultants
Josef Micallef, Associated Sales Tax Consultants

Property Taxpayers' Bill of Rights Hearings

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Property Taxpayers' Bill of Rights Hearings. Mr. Gilman entered into the record documents submitted by Lucy Walsh and Terry L. Polley (Exhibit 10.4).

Speakers: David Lucero, Lucero Enterprises
Mary Alice Stoffel, Taxpayer, Retired Teacher

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Proposed Amendment to Sales and Use Tax Regulation 1620, Interstate and Foreign Commerce

Randy Ferris, Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding Regulation 1620, *Interstate and Foreign Commerce*, which is proposed to be amended to interpret, implement, and make specific Revenue and Taxation Code section 6352. Amendments are proposed to provide that transactions involving sales of locomotives are not subject to use tax if specified conditions are met, and to correct clerical errors. (Exhibit 10.5.)

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted the amendments to Regulation 1620, which include nonsubstantive changes to the published text.

Proposed Adoption of Sales and Use Tax Regulation 1823.4, Place of Delivery Tangible Personal Property

Selvi Stanislaus, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the Proposed Regulation 1823.4, *Place of Delivery of Tangible Personal Property*, which is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code section 7262. The regulation is proposed to provide a certificate of exclusion from district use tax for a purchaser to submit to a retailer in order to demonstrate that district use tax is not applicable to a given transaction. (Exhibit 10.6.)

Speakers: Albin C. Koch, General Tax Counsel, MBIA MuniServices

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted amendments to Regulation 1823.4 as published.

LEGAL APPEALS BUSINESS TAX MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

California High Reach & Equipment, Inc., 261651 (KH)

7-1-00 to 6-30-03, \$19,044.98 Tax

Action: Redetermine as recommended by the Appeals Division.

Timothy Michael Curtis, 316644 (CH)

May 17, 2005 Notice of Seizure and Forfeiture

Action: Determined that staff properly seized the cigarettes.

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Templeton Spirit, 317241 (GH)

May 27, 2005 Notice of Seizure and Forfeiture

Action: Determined that staff properly seized the cigarettes.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *WI LV #2, A California Limited Partnership, 281230.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating in *Jeffrey Balkin, 145089*, the Board made the following orders:

James D. Brewster, 281462

1998, \$9,188.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

James E. and Sylvia D. Brown, 294795

2001, \$2,203.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Heidi Cairelli, 301346

2001, \$534.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Marc Cohen, 301143

2001, \$848.50 Claim for Refund

Action: Dismissed due to lack of jurisdiction.

Michael J. Dodge, 306358

1998, \$746.00 Claim for Refund

1999, \$1,882.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Egsan, Inc., 295699

2003, \$1,877.58 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Robert S. Engel, 297084

1996, \$608.91 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

William and Patricia Facticeau, 287728

2001, \$6,107.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Curtis L. and Judy D. Henderson, 287726

1995, \$1,180.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Barbara L. Meyer, 287045

2000, \$23,000.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Lwanda Okello, 288381

2001, \$1,267.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Del Richardson, 271912

1995, \$1,314.00 Tax, \$328.50 Late Filing Penalty and Notice and Demand Penalty

1996, \$2,206.00 Tax, \$551.50 Late Filing Penalty and Notice and Demand Penalty

1997, \$1,742.00 Tax, \$435.50 Late Filing Penalty and Notice and Demand Penalty

1998, \$3,736.00 Tax, \$934.00 Late Filing Penalty and Notice and Demand Penalty

1999, \$5,778.00 Tax, \$1,444.50 Late Filing Penalty and Notice and Demand Penalty

2000, \$5,173.00 Tax, \$1,293.25 Late Filing Penalty and Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Douglas C. Roberts, 286918

2002, \$969.75 Assessment

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Elsbeth W. Shepherd, 289917

2000, \$3,449.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Lorne J. Simpson, 286423

2001, \$1,331.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Connie R. Slaughter, 288713

2002, \$5,383.00 Tax, \$1,345.75 Late Filing Penalty, \$1,345.75 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

WI LV #2, A California Limited Partnership, 281230

2000, \$800.00 Tax, \$200.00 Claim for Refund

2001, \$800.00 Tax, \$200.00 Claim for Refund

2002, \$800.00 Tax, \$300.00 Claim for Refund

2003, \$800.00 Tax

Action: The Board deferred consideration of this matter.

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Jeffrey Balkin, 145089

1982, \$1,403.00 Assessment

Sylvia Freeman, 260948

1983, \$93.00 Assessment

Action: Deny the petition for rehearing. Mr. Chiang not participating.

John W. Buergel, 252219, 262871

2000, \$787.00 Tax, \$196.75 Late Filing Penalty

2001, \$9,186.00 Tax, \$2,296.50 Late Filing Penalty

Action: Deny the petition for rehearing.

Roland and Romaine Reese, 252111

1999, \$1,092.00 Tax, \$218.40 Accuracy Related Penalty

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matter *Romanse Banks*, 299984.

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Romanse Banks, 299984

2003, \$1.00 or more

Action: The Board took no action.

Margaret Diaz, 295585

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Ramon M. Diaz, 295599

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Jan Hausmann, 298737

2004, \$332.50

Action: Sustain the action of the Franchise Tax Board.

Collins Haynes, 293067

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Khan Ly, 295431

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Arthur Van Allen, 298577

2001, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Rebekah Viselli, 300864

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Michael Ydigoras, 300810

2001, \$1.00 or more

2002, \$347.00

Action: Sustain the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, REDETERMINATIONS AND DENIALS OF CLAIMS FOR REFUND, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Beijing Antique City (USA), Inc., 300414 (AS)

3-31-00 to 12-31-02, \$71,893.39

Action: Approve the redetermination as recommended by staff.

Polyone Corporation, 285800 (OHA)

4-1-00 to 9-30-03, \$69,727.06

Action: Approve the redetermination as recommended by staff.

K/P Corporation, 314183 (CH)

4-1-01 to 3-31-04, \$134,696.70

Action: Approve the denial of claim for refund as recommended by staff.

IMA North America, Inc., 314517 (OHB)

7-1-92 to 9-30-01, \$251,553.47

Action: Approve the denial of claim for refund as recommended by staff.

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SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating in *Julie Yeh Johnson, 317405*; *Shiao Ping Chen, 317421*; and, *National Semiconductor Corporation, 219829*; the Board made the following orders:

The Sohn Corporation, 317407 (EAA)

7-1-02 to 9-30-02, \$66,751.49

Action: Approve the credit and cancellation as recommended by staff.

Julie Yeh Johnson, 317405 (AP)

4-1-96 to 10-31-02, \$87,864.81

Action: Approve the credit and cancellation as recommended by staff. Mr. Chiang not participating.

Shiao Ping Chen, 317421 (AP)

4-1-96 to 10-31-02, \$87,864.81

Action: Approve the credit and cancellation as recommended by staff. Mr. Chiang not participating.

Hani, Inc., 317353 (EH)

1-1-03 to 3-26-03, \$89,926.69

Action: Approve the credit and cancellation as recommended by staff.

Professional Equipment & Design, Inc., 315887 (OHA)

1-1-04 to 6-30-04, \$76,751.90

Action: Approve the credit and cancellation as recommended by staff.

Branttel Networks, Inc., 317688 (GH)

10-1-03 to 3-31-04, \$55,038.95

Action: Approve the credit and cancellation as recommended by staff.

Farmers Group, Inc., 316301 (AS)

1-1-01 to 6-30-03, \$52,118.87

Action: Approve the refund as recommended by staff.

Visionary Forces, Inc., 288180 (AC)

1-1-02 to 12-31-04, \$107,961.74

Action: Approve the refund as recommended by staff.

Commercial Custom Seating & Upholstery, 309238 (EA)

10-1-04 to 12-31-04, \$68,102.59

Action: Approve the refund as recommended by staff.

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Ontario Automotive, Inc., 315966 (EH)

10-1-01 to 9-30-04, \$94,832.81

Action: Approve the refund as recommended by staff.

K/P Corporation, 265227 (CH)

4-1-01 to 6-30-04, \$329,199.80

Action: Approve the refund as recommended by staff.

Lynwood Unified School District, 281824 (AA)

7-1-03 to 3-31-04, \$171,869.65

Action: Approve the refund as recommended by staff.

Mc-Connell Cabinets, Inc., 317569 (AP)

1-1-02 to 12-31-04, \$119,490.52

Action: Approve the refund as recommended by staff.

Cardinal Health 414, Inc., 266960 (OHA)

1-1-00 to 3-31-04, \$54,407.01

Action: Approve the refund as recommended by staff.

Sylvania Lighting Services Corporation, 282342 (OHB)

1-1-00 to 12-31-02, \$53,675.08

Action: Approve the refund as recommended by staff.

Children's Hospital Central California, 315947 (KHO)

7-1-01 to 6-30-04, \$57,171.21

Action: Approve the refund as recommended by staff.

Don Roberto Jewelers, Inc., 315083 (EAA)

7-1-01 to 9-30-04, \$247,375.19

Action: Approve the refund as recommended by staff.

National Semiconductor Corporation, 219829 (GH)

12-12-83 to 6-26-88, \$459,198.00

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

Jelly Belly Candy Company, 317597 (JHF)

10-1-01 to 12-31-04, \$200,966.92

Action: Approve the refund as recommended by staff.

E & J Gallo Winery, 315967 (KH)

4-1-00 to 3-31-03, \$108,511.06

Action: Approve the refund as recommended by staff.

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Overhead Door Corporation, 318319 (OHC)

7-1-99 to 3-31-03, \$82,104.47

Action: Approve the refund as recommended by staff.

E. R. Carpenter Company, Inc., 304342 (OHB)

1-1-01 to 6-30-04, \$102,962.92

Action: Approve the refund as recommended by staff.

DBL Labs, Inc., 143629 (OHA)

7-1-98 to 10-31-01, \$83,239.40

Action: Approve the refund as recommended by staff.

Alcoa Fujikura Ltd., 315938 (OHA)

4-1-00 to 3-31-01, \$81,313.24

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA LLC, 313036 (KH)

5-27-05 to 6-16-05, \$167,483.00

Action: Approve the refund as recommended by staff.

Birmingham Fire Insurance Company, 187212 (OHB)

4-1-99 to 12-31-02, \$50,262.86

Action: Approve the refund as recommended by staff.

Colby Effler & Partners, 262490 (AS)

1-1-01 to 6-30-04, \$81,600.27

Action: Approve the refund as recommended by staff.

Wireless Fulfillment Services, LLC, 298786 (OHA)

4-1-01 to 3-31-03, \$86,540.31

Action: Approve the refund as recommended by staff.

Morton International, Inc., 192034 (OHB)

1-1-00 to 12-31-01, \$91,307.60

Action: Approve the refund as recommended by staff.

Kalmar Industries USA, Inc., 251380 (OHA)

4-1-01 to 9-30-03, \$137,228.35

Action: Approve the refund as recommended by staff.

PSI Management Team, Inc., 306818 (JH)

7-1-04 to 9-30-04, \$59,449.79

Action: Approve the refund as recommended by staff.

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Oak Creek Homes, LLC, 306013 (KHO)

7-1-03 to 12-31-04, \$206,659.00

Action: Approve the refund as recommended by staff.

VA Tech Voest M.C.E. Corporation, 316921 (OHB)

1-1-01 to 12-31-03, \$60,226.41

Action: Approve the refund as recommended by staff.

James Bryson Henry, 315965 (KHM)

1-1-02 to 12-31-04, \$116,888.57

Action: Approve the refund as recommended by staff.

Weyerhaeuser Company, 314774 (OH)

7-1-00 to 12-31-03, \$62,549.66

Action: Approve the refund as recommended by staff.

American Buildings Company, 306072 (OHC)

7-1-04 to 9-30-04, \$53,999.52

Action: Approve the refund as recommended by staff.

Orange County Teachers Federal Credit Union, 257805 (EA)

4-1-01 to 12-31-02, \$58,708.48

Action: Approve the refund as recommended by staff.

Lease Corporation of America, 310229 (OHA)

1-1-04 to 9-30-04, \$62,221.14

Action: Approve the refund as recommended by staff.

Williams Lea, Inc., 243187 (OHA)

7-1-00 to 12-31-02, \$235,815.43

Action: Approve the refund as recommended by staff.

Roma Limited Liability Company, 307908 (AC)

10-1-04 to 3-31-05, \$66,576.33

Action: Approve the refund as recommended by staff.

PCT Enterprises, Inc., 317573 (CH)

1-1-01 to 9-30-04, \$65,078.01

Action: Approve the refund as recommended by staff.

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SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, RELIEF OF INTEREST, AND REDETERMINATION, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties, Relief of Interest, and Redetermination, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *ExxonMobil Oil Corporation, 316831*, the Board made the following orders:

Kern Oil & Refining Company, 314687 (MT)

11-1-04 to 11-30-04, \$176,952.77

Action: Approve the relief of penalty as recommended by staff.

ExxonMobil Oil Corporation, 316831 (MT)

5-1-05 to 5-31-05, \$83,642.10

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Ultramar, Inc., 316672 (MT)

1-1-02 to 12-31-02, \$80,596.56

Action: Approve the relief of interest as recommended by staff.

U.S. Department of Navy, 326401 (EF)

1-1-96 to 12-31-96, \$59,426.00

Action: Approve the redetermination as recommended by staff.

SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating in *Southern California Edison Company, 259658*; *The Vons Companies, Inc., 314065*; and, *Safeway, Inc., 316482*; the Board made the following orders:

U.S. Department of Navy, 326113 (EF)

1-1-97 to 12-31-97, \$67,860.00

Action: Approve the credit and cancellation as recommended by staff.

Southern California Edison Company, 259658 (ET)

1-1-01 to 12-31-03, \$1,391,198.79

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

The Vons Companies, Inc., 314065 (ET)

6-9-05 to 6-9-05, \$167,575.27

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

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Safeway, Inc., 316482 (ET)

6-30-05, \$124,889.52

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

LEGAL APPEALS PROPERTY TAX MATTERS, CONSENT

With respect to the Legal Appeals Property Tax Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Petition for Reassessment of Unitary Value

Pacific Gas & Electric Company (135), 316108

2005, \$15,202,300,000.00 Unitary Value

Action: Deny the petition for reassessment of 2005 unitary value as recommended by the Appeals Division. Ms. Mandel not participating in accordance with Government Code section 7.9.

LEGAL APPEALS BUSINESS TAX MATTER, ADJUDICATORY

Rosalie Wardell, 115009 (JH)

10-1-96 to 3-31-00, \$8,535.31 Tax, \$00.00 Failure to File Penalty

Considered by the Board: June 30, 2005

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Yee not participating, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Philip and Carmella Glezer, 259538

1990, \$1,876.84 Assessment

Considered by the Board: September 1, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Ronald E. McKeown, 290245

2000, \$3,245.00 Assessment

Considered by the Board: September 1, 2005

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Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Michael G. McKinney, 290004

2001, \$1,217.00 Assessment

Considered by the Board: September 1, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Scott R. and Judith E. Martin, 253561

1999, \$9,399.00 Assessment

Considered by the Board: September 1, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision granting the petition for rehearing.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Unitary Escaped Assessment

Calpoint (California), LLC (7971)

2005, \$122,000.00 Value

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary escaped assessment as recommended by staff.

Board Roll Changes

2004 State-Assessed Property Roll

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2004 Board Roll of State-Assessed Property as recommended by staff (Exhibit 10.7).

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OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Kurnia Kusumadilaga; George Ortega; Harmik Tahmassian; and, Patricia Vallejo and Jesus Zamora*; as recommended by staff.

CHIEF COUNSEL MATTERS**RULEMAKING****Amendments to Sales and Use Tax Regulation 1584, Membership Fees**

Selvi Stanislaus, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding amendments to Sales and Use Tax Regulation 1584, *Membership Fees* (Exhibit 10.8).

Action: Mr. Parrish moved to cap the nominal amount of membership fee and authorize publication of the regulation. The motion failed for lack of a second.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish voting no, the Board approved the section 100 change to Regulation 1584.

Petition to amend Sales and Use Tax Regulation 1591, Medicines and Medical Devices

Selvi Stanislaus, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the petition to amend Sales and Use Tax Regulation 1591, *Medicines and Medical Devices* (Exhibit 10.9).

Speakers: John Valencia, Counsel, California Society of Dermatology & California Medicine
James Rand Leff, Representing California Plastic Surgeons Association

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board accepted the petition to amend Regulation 1591 and referred the regulation to the Business Tax Committee to hold one expedited interested parties meeting.

OTHER CHIEF COUNSEL MATTERS**AB-71 Cigarette and Tobacco Products Licensing Act of 2003**

Kristine Cazadd, Chief Counsel, Legal Department, made introductory remarks regarding proposed clarification of penalties and request to draft regulations for implementing AB-71 Cigarette and Tobacco Products Licensing Act of 2003 (Exhibit 10.10).

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Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted staff's recommendation.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 10.11).

Jackie Chinn, Staff Programmer Analyst, Technology Services Division,
Headquarters
Robert Frank, Administrator, Fuel Industry Section, Fuel Taxes Division,
Property and Special Taxes Department, Headquarters
Thomas A. Glab, Supervising Tax Auditor I, Chicago Area Out-of-State District
Office
Trowbridge Hendrick, Business Tax Compliance Supervisor II, Centralized
Collection Section, Headquarters
Kathleen E. Madrid, Business Taxes Compliance Supervisor II, Santa Rosa
District Office
Rita Rae Perry, Associate Governmental Program Analyst, Communications
Office, Headquarters
Joseph Riccobene, Associate Tax Auditor, Excise Taxes and Fees Division,
Property and Special Taxes Department, Headquarters

Action: Approve the Superior Accomplishment Award Nominees (Exhibit 10.12).

Action: Approve the Board Meeting Minutes of June 30-July 1, 2005.

Action: Approve the 2006 Hazardous Waste Fees and Occupational Lead Poisoning Prevention Fee as recommended by staff (Exhibit 10.13).

Action: Approve the prepayment rates of sales tax on motor vehicle fuel, diesel fuel and jet fuel as recommended by staff (Exhibit 10.14).

Action: Approve Assessors' Handbook Section 534, Rural Building Costs (Exhibit 10.15).

Action: Approve Assessors' Handbook Section 581, Equipment Index and Percent Good Factors (Exhibit 10.16).

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BOARD COMMITTEE REPORTS**Business Taxes Committee**

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel voting no, the Board approved the Business Taxes Committee report (Exhibit 10.17).

Property Tax Committee

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Property Tax Committee report (Exhibit 10.18).

OTHER ADMINISTRATIVE MATTERS**Executive Director's Report**

Ramon Hirsig, Executive Director, provided an update regarding the Multistate Tax Commission (Exhibit 10.19).

Budget Change Proposals

Karen Johnson, Deputy Director, Administration Department, made introductory remarks regarding budget change proposals (Exhibit 10.20).

Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved International Fuel Tax Agreement (IFTA) / North America Free Trade Agreement (NAFTA) Interim Program – BCP No. 4 as recommended by staff.

Speaker: David R. Doerr, Chief Tax Consultant, Cal Tax

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board approved Agricultural Inspection Station Tax Leads – Tax Gap BCP No. 2c.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD OCTOBER 25, 2005**

Donald Prince, 283459

Final Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

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Costco Wholesale Corporation, 266592

Final Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Parrish and Mr. Leonard voting yes, Ms. Mandel voting no, Ms. Yee abstaining, the Board reversed the action of the Franchise Tax Board.

David A. and Cheryl D. Duffield, 241055

Final Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON PROPERTY TAXES HEARINGS HELD OCTOBER 25, 2005

UNOCAP (480), 316350

Final Action: Mr. Parrish moved to grant the petition for abatement of penalty. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Yee voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the penalty be reduced by 10 percent.

Looking Glass Networks, Inc. (7861), 316105

Final Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be denied as recommended by staff.

SALES AND USE TAX APPEALS HEARING

Derek Ward, 132982 (GH)

10-1-92 to 12-31-96, \$56,859.39 Tax, \$00.00 Negligence Penalty

Fabricated Steel Products, Inc., 132981 (GH)

1-1-97 to 6-30-00, \$00.00 Tax, \$935.94 Negligence Penalty

For Petitioner: No appearance

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence warrants further adjustments to the audited taxable sales in the determination issued to petitioner Ward.

Whether the negligence penalty was properly applied in the determination issued to petitioner Fabricated Steel Products, Inc.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 3:25 p.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss settlements (R&T Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Govt. Code § 11126(a)).

The Board recessed at 3:27 p.m. and reconvened immediately in open session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

The Board adjourned at 3:28 p.m.

The foregoing minutes are adopted by the Board on February 1, 2006.

Note: The following cases were removed from the calendar prior to the meeting: *The Lurie Company*, 284734; *William Emmet Wehrli*, 253121(CH); and, *A. Diamond Production, Inc.*, 36630 (BH).